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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,448	09/06/2006	Sabrina Higgins	102792-609 (11382P1 US)	1281
27389	7590	09/22/2010	EXAMINER	
PARFOMAK, ANDREW N. NORRIS MCLAUGHLIN & MARCUS PA 875 THIRD AVE, 8TH FLOOR NEW YORK, NY 10022			ROONEY, NORA MAUREEN	
			ART UNIT	PAPER NUMBER
			1644	
			MAIL DATE	DELIVERY MODE
			09/22/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/597,448

Applicant(s)

HIGGINS ET AL.

Examiner

NORA M. ROONEY

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Nora M Rooney/
Primary Examiner, Art Unit 1644

Continuation of 11. does NOT place the application in condition for allowance because: Claims 1, 4-11 and 13-19 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/595,767 for the same reasons as set forth in the Office Action mailed on 05/26/2010. Contrary to Applicant's assertion, the rejection is not premature and stands for reasons of record until the conflicting claims are amended or cancelled.

Claims 1, 4-8, 11 and 13-17 stand rejected under 35 U.S.C. 102(b) as being anticipated by GB Patent Application Publication 2 367 243 (Reference 11; IDS filed on 07/26/2006) for the same reasons as set forth in the Office Action mailed on 05/26/2010. Applicant's assertion that the reference does not anticipate because it does not teach long-term effects is not persuasive. Applicants have not distinguished their method from the reference method, such that when Applicant's method is performed the resulting effects are different from the reference method. As currently recited, the reference method anticipates the claimed invention. It is suggested that Applicant amend their claims to recite a method comprising method steps that distinguish the claimed method from the reference teachings and that would account for "long-term effects." There is currently no difference between the instant claimed method and the method of GB Patent Application Publication 2 367 243. Therefore, the reference teachings anticipate the claimed invention.

Claims 1, 4-8, 11 and 13-17 stand rejected under 35 U.S.C. 102(b) as being anticipated by WO 01/76371 (Reference 2; IDS filed on 07/26/2006) for the same reasons as set forth in the Office Action mailed on 05/26/2010. Applicant's assertion that the reference does not anticipate because it does not teach long-term effects is not persuasive. Applicants have not distinguished their method from the reference method, such that when Applicant's method is performed the resulting effects are different from the reference method. As currently recited, the reference method anticipates the claimed invention. It is suggested that Applicant amend their claims to recite a method comprising method steps that distinguish the claimed method from the reference teachings and that would account for "long-term effects." There is currently no difference between the instant claimed method and the method of WO 01/76371. Therefore, the reference teachings anticipate the claimed invention.

Claims 1, 9, 11 and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over GB Patent Application Publication 2 367 243 (Reference 11; IDS filed on 07/26/2006) or WO 01/76371 (Reference 2; IDS filed on 07/26/2006) each in view of WO 03/070286 (Reference 4; IDS filed on 07/26/2006) for the same reasons as set forth in the Office Action mailed on 05/26/2010 and set forth supra.

It is the Examiner's suggestion that Applicant amend their claims to more distinctly claim their method steps that result in longer lasting effects than the methods set forth in the cited references.